

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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**IN THE MATTER OF THE  
INFORMAL HEARING AND  
INFORMAL ASSESSMENT  
CONFERENCE FOR NOTICE OF  
VIOLATION; VIOLATION No.  
N10034, HIAWATHA COAL  
COMPANY, BEAR CANYON  
MINE, C/015/0025, EMERY  
COUNTY, UTAH**

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**FINDINGS of FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

**CAUSE NO. C/015/0025**

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**BACKGROUND**

On February 18, 2009, the Division of Oil, Gas and Mining (Division) held an Informal Hearing and Assessment Conference as provided for by R645-400-350 and R645-401-700 Utah Administrative Code (2008). The hearing was held in response to the written request by Hiawatha Coal Company (Hiawatha) for an informal hearing pursuant to R645-400-350 to review the fact of violation for Cessation Order 10034 (CO) issued to it on February 5, 2009 for operations at the Bear Canyon Mine, C/015/0025, Emery County, Utah. Hiawatha and the Division stipulated that this informal hearing fulfilled the opportunity for an informal review of the fact of the violation as permitted and provided for under both by R645-400-350 and R645-401-700, Utah Administrative Code (2008) and that the right of Hiawatha to seek immediate review of the Cessation Order before the Board is not restricted or infringed.

**ISSUES**

The Division in its Cessation Order # 10034 found that Hiawatha was operating in violation of rules R645-301-812.700, adequate bond coverage required at all times; R645-303-323 adequate surety required prior to approval of a permit transfer; and R645-303-310 no transfer or assignment will be made without the prior approval of the Division. In consequence of these violations the Division found that Hiawatha was conducting mining operations without a permit in violation of R645-400-312 requiring issuance of the Cessation Order.

Hiawatha in its written request for an Informal Assessment Conference requested that the Cessation Order be withdrawn. Hiawatha asserts that it is not required to file a bond until the Division finds the application for transfer to be complete, and that in any event it has done all that it can do to transfer the surety to its name, that such continued mining operations are covered by the existing bond and that continued mining pending approval of the transfer of the permit is not a violation under R645-400-312 and R645-303-300 to 360.

No penalty had been assessed as of the time of the hearing and the hearing was held in advance of such assessment to review the fact of the violation. Hiawatha will be afforded an opportunity to seek review of the amount of the penalty as a continuation of this informal assessment conference when the amount of penalty has been determined and the Division has given Hiawatha notice of the amount assessed.

## **PARTIES**

John Baza, Director of the Division of Oil, Gas, and Mining, served as the hearing officer. The Board of Oil, Gas and Mining has designated the Director of the Division as its representative for the purpose of conducting informal hearings under R645-400-355. The Director was also selected to serve as the assessment conference officer to review the fact of the violation pursuant to R645-400-721.

Peter Guyon, attorney at law, represented Hiawatha at the hearing. Elliott Finley, Charles Reynolds, and Mark Reynolds attended as representatives for Hiawatha. Mark Hansen, attorney at law, attended and participated in the hearing on behalf of Joseph Kingston and Rachel Young, persons owning water rights that they allege are affected by the order. Troy Aramburu, of Jones, Waldo, Holbrook and McDonough, appeared for Lyndon Properties Insurance Co. Dana Dean, Associate Director, and Daron Haddock, Permit Supervisor, appeared for the Division to present the facts and history of the Cessation Order. The Division was represented by Steve Alder, Assistant Attorney General.

No recording or transcript of the conference was made.

## **PROCEDURAL HISTORY**

1. The Cessation Order #10034 was served on Elliot Finley on February 5, 2009.
2. A Request for an informal hearing pursuant to Rule R645-400-350 was delivered to the Division on February 9, 2009.
3. In response to the request, the Division sent Notice to Hiawatha by certified mail on February 10, 2009 that in accordance with R645-401-700 an informal assessment conference was to be held February 18, 2009 to review the fact of the violation and the proposed penalty.
4. On February 18, 2009 the above named parties appeared. After the Mr. Hansen raised concerns about the inconsistency between the type of hearing requested and the nature of the notice, the parties determined to proceed with the informal conference to review the fact of the violation and to hear Hiawatha's objections to the CO and the Division's response.
5. Hiawatha's counsel presented a letter with the legal arguments in support of its position that the CO was inappropriate and the Division presented its

response. After the legal arguments were presented and arguments exchanged, the Hearing officer presented questions to each of the parties to determine more of the facts concerning the legal and financial qualifications of Hiawatha to transfer the permit and the options for obtaining or transferring the surety.

Based on the arguments and evidence presented, the Hearing Officer makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. On January 8, 2008 C.W. Mining, the permit holder and operator of the Bear Canyon mine, became the subject of a petition of involuntary bankruptcy commenced by creditors.
2. On June 24, 2008 Hiawatha entered into a written agreement for the sale of the Bear Canyon Mine and transfer of the permit.
3. Prior to the agreement to transfer the permit, C. W. Mining was fully permitted and bonded as the operator of the Bear Canyon Mine with Lyndon Insurance Co. as the surety.
4. The agreement of sale between C.W. Mining and Hiawatha required the bonding be kept in place pending final approval of the transfer.
5. After the agreement of sale Hiawatha took over the operations of the mine and applied for a transfer of the permit on August 4, 2008. Notice of the proposed transfer was published as required by the rules on July 1, 2008.
6. On August 8, 2008 the bankruptcy court issued an order precluding C.W. Mining from taking any further actions to complete the transfer and advising the Division that the parties were not to seek any regulatory approvals of the transfer until the matter of the objections filed by the creditors was addressed further by the court.
7. On September 26, 2008 the bankruptcy court denied the objections of C.W. Mining to the petition for involuntary bankruptcy, confirming the bankrupt status and continuing jurisdiction of the court.
8. On November 20, 2008 Hiawatha was advised by the Division in writing that they needed to supply missing information required for permit transfer and a surety for the mining operations no later than December 1, 2008.
9. On December 24, 2008 Hiawatha was advised that all of the information that was required had been submitted except for a reclamation surety that needed to be provided by January 8, 2009 to avoid a cessation order.

10. On January 7, 2009 the Division met with representatives of Hiawatha and to allow additional time to provide a surety and agreed to advise Lyndon of the urgent need for a surety for Hiawatha to avoid a CO.
11. On January 8, 2009 Hiawatha and Lyndon were advised by letter that all information needed had been provided except the bond and that a surety must be provided by January 26, 2009 to avoid the issuance of a cessation order.
12. On January 23, 2009 the Division was advised by counsel for Lyndon that Lyndon had agreed to provide a surety upon certain terms which included Hiawatha providing collateral of \$600,000.00, personal guarantees of Elliot Finley, and Melody Finley, a guarantee from Standard Industries, and monthly payments of \$100,000.00.
13. As of February 5, 2009 Hiawatha had not submitted a signed application for the surety with Lyndon under their agreement as required, had not posted the collateral required, and had not provided the guarantees; Hiawatha had also not taken any other action with other parties to provide a surety as required.
14. On February 5, 2009 Cessation Order #10034 was issued requiring that Hiawatha: (1) cease all operations that may result in an increase in the amount of surface disturbance; (2) cease any work that was intended or was part of the development of any long wall panel in addition to the current panel; (3) communicate with the BLM, MSHA, and the Utah Office of Mine Safety regarding anticipated termination of mining operations; and (4) after the completion of the mining in the current long-wall panel cease all coal mining operations.
15. In order to abate Cessation Order #10034 Hiawatha was required to (1) provide a surety in the amount of \$1,731,000, (2) provide a complete response to the additional deficiencies as identified in letter dated January 28, 2009, and (3) obtain the Division's approval of the transfer that may be subject to further orders of the bankruptcy court regarding the right of C.W. Mining to transfer the permit. (A response to the letter of January 28, 2009 had been submitted as of the day of the hearing.)
16. At the informal hearing Hiawatha confirmed that as of that day it had still not submitted a signed application, made payment of collateral, or taken any of the other actions required for a bond with Lyndon in accordance with their offer, and had not taken any other action with other parties to provide a surety as required.

## CONCLUSIONS OF LAW

1. Notice of the informal hearing was given as required for both an informal hearing and an informal assessment as required by the appropriate rules and the hearing was conducted at a time and place as agreed by the parties and consistent with the requirements of the Coal Mining and Reclamation Act (Act).
2. The informal conference fulfilled the requirement for an informal hearing before the Division of the cessation order including the facts of the violation and the hearing officer was properly authorized to conduct the hearing.
3. No party, including Hiawatha, is precluded by the holding of the hearings or the failure of the Division to determine a penalty and provide an opportunity for an assessment conference on the penalty form pursuing an appeal of the cessation order directly to the Board of Oil, Gas and Mining as provided for at Utah Code §40-10-22(3) and pursuant to any other provisions of the Act, or the rules.
4. C. W. Mining's permit may be transferred to Hiawatha provided that "[N]o transfer, assignment, or sale of the rights granted under any permit . . . shall be made without the written approval of the Division, §40-10-12(2) Utah Code (2009); and R645-303-310 Utah Administrative Code (2009).
5. The transfer of C.W. Mining's permit must be made and approved by the Division in accordance with R645-303-300 to 360 Utah Administrative Code (2009) which requires submitting an application with all required information, advertising the filing of the application, and obtaining appropriate performance bond coverage; and only when these requirements are satisfied can the Division make findings, give notice of the findings, and the permit transfer be consummated. R645-303-300 to 360, Utah Administrative Code (2009)
6. Hiawatha's coal mining operation of the Bear Canyon mine without a permit requires the issuance of a cessation order *unless* the mining operations are part of an integral uninterrupted extension of previously permitted operations, *and the person has filed a timely and complete application for a permit to conduct such operations*. R645-400-312, Utah Administrative Code (2009).
7. Hiawatha has been allowed a reasonable opportunity since its purchase on June 24, 2008 to submit a complete application and to obtain a bond, and Hiawatha has failed to take reasonable and appropriate actions to timely file a complete application including its complete failure to take necessary actions to acquire a bond.
8. Hiawatha has been given numerous notices of the immediate and urgent need to provide a bond in order to operate under the permit as a transferee including written notice on December 24, 2008 and January 8, 2009 when Hiawatha was told that the information required for the application was all

provided except for the bond and that a bond was needed or a cessation order would be given.

9. Since Hiawatha has not submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee as requested and as required by R645-301-800 and R645-303-323, the Division cannot approve the transfer of the permit.
10. The Division cannot continue to allow Hiawatha to operate without a permit in violation of R645-400-312 since it has failed without good cause to comply with the application requirements for transfer of the permit.
11. The Cessation Order is crafted in a manner that will enforce the requirement of the Act that operators be fully bonded and have a valid permit before conducting coal mining operations and will also provide for the safety of the miners, avoid loss of coal, and allow for a safe termination of operations.

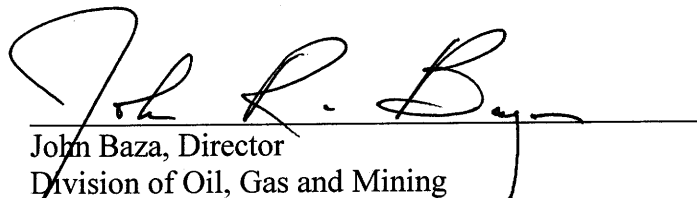
### **ORDER**

NOW THEREFORE based on the foregoing findings of fact and conclusions of law, the Cessation Order is found to be appropriate and is upheld and Hiawatha is to comply with all of the terms and conditions as set forth therein.

### **RIGHT TO APPEAL**

Hiawatha, as the Operator, and any party adversely affected by Cessation Order # 10034 which was the subject of this hearing, are advised that they have the right pursuant to Utah Code §40-10-22(3) and R645-400-360, Utah Administrative Code to appeal the cessation order by filing a request for agency action in accordance with the Rules of the Board within 30 days of the notice of this decision.

SO DETERMINED AND ORDERED this 2<sup>nd</sup> day of March 2009

  
John Baza, Director  
Division of Oil, Gas and Mining

## **CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** IN THE MATTER OF  
THE INFORMAL HEARING AND INFORMAL ASSESSMENT CONFERENCE FOR  
NOTICE OF VIOLATION; VIOLATION No. N10034, HIAWATHA COAL COMPANY,  
BEAR CANYON MINE, C/015/0025, EMERY COUNTY, UTAH,

To be sent by email and to be mailed with postage prepaid, this 2<sup>nd</sup> day of March, 2009 to the  
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